

1 Claim No. 10725-02094-2 by Kay M. Cantrell and Donald L. Hess, as joint tenants with
 2 right of survivorship, (the "Subject Proof of Claim") against USA Commercial Mortgage
 3 Company ("USACM") in the amount of \$49,551.70.¹

4 Here, the Subject Proof of Claim is based upon a \$50,000 investment in the Roam
 5 Development Loan, which loan the borrower repaid in full. The USACM Trust has filed
 6 omnibus objections to the claims arising out of investments in the Roam Development
 7 Loan. In association with the Roam Development omnibus objections, on January 9,
 8 2009, the USACM Trust filed the Declaration of Edward M. Burr in Support of Omnibus
 9 Objections to Proofs of Claim Based Upon the Investment in the Marquis Hotel Loan
 10 ("Burr Decl.") [DE 6722].² A Copy of the Burr Decl. with the hearing date redacted and
 11 "Exhibit A" omitted³ will be served on Ms. Cantrell and Mr. Hess with this Objection.

12 MEMORANDUM OF POINTS AND AUTHORITIES

13 I. BACKGROUND FACTS

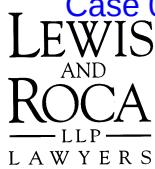
14 a. The USACM Bankruptcy

15 On April 13, 2006 ("Petition Date"), USACM filed a voluntary petition for relief
 16 under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as
 17 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
 18 Debtor's post-petition management of the Debtor was under the direction of Thomas J.
 19 Allison of Mesirov Financial Interim Management, LLC, who served as the Chief
 20 Restructuring Officer.

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 23 ¹ In compliance with Nevada LR 3007, a copy of the Subject Proof of Claim is attached as **Exhibit A**

24 ² The USACM Trust filed the Burr Decl. [DE 6722] in support of the Roam Development omnibus
 25 objections. The Court heard those omnibus objections and sustained them at the omnibus hearing on
 February 20, 2009.

26 ³ **Exhibit A** to the Burr Decl. lists the Direct Lenders whose claims were affected by the Roam
 Development omnibus objections. Those Direct Lender claims have no relevance to this objection and,
 therefore, **Exhibit A** to the Burr Decl. will not be provided to Ms. Cantrell.



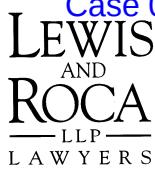
1 USACM was a Nevada corporation that, prior to the Petition Date, was in the
2 business of underwriting, originating, brokering, funding and servicing commercial loans
3 primarily secured by real estate, both on behalf of investors and for its own account. That
4 business included the solicitation of investors to purchase fractional interest in loans that
5 USACM originated and then serviced. These investors are referred to as "Direct Lenders"
6 in USACM's bankruptcy case and in this Objection.

7 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,
8 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the
9 successor to USACM with respect to standing to seek allowance and disallowance of
10 Claims under 11 U.S.C. § 502(a).

11 **b. The Roam Development Loan**

12 On or about December 19, 2006, the Roam Development Loan was paid off in full,
13 as reflected in USACM's books and records. (Burr Decl. ¶ 9.) Shortly thereafter,
14 USACM processed the payoff and distributed the proceeds to the Direct Lenders on the
15 Roam Development Loan. (Burr Decl. ¶ 9.)

16 Minus Unremitted Principal, the Direct Lenders were in turn paid in full, subject to
17 servicing fees and any other charges under their respective Loan Servicing Agreements
18 and this Court's orders, including the Confirmation Order. In general, the Direct Lenders
19 received their principal and interest on the Roam Development Loan, less Unremitted
20 Principal and sums withheld for servicing fees, servicer advances, Prepaid Interest and
21 sums known as the 2% Holdback pursuant to the Confirmed Plan. On the Effective Date
22 of the Plan, the Prepaid Interest was applied, a portion of the 2% Holdback was applied to
23 the allowed claims of the Direct Lender Committee, and the balance paid to the Direct
24 Lenders. (Burr Decl. ¶ 10.)



1 Accordingly, the USACM Trust no longer has further obligations to the Direct
2 Lenders arising out of the Roam Development Loan to the extent that loan has been repaid
3 to the Direct Lenders, pursuant to USACM's books and records. (Burr Decl. ¶ 11.)

4 Ms. Cantreall and Mr. Hess do have a valid claim for unremitted principal
5 associated with the Roam Development Loan, but they asserted that claim separately as
6 Proof of Claim 10725-02094-1. Attached as **Exhibit A** is the Subject Proof of Claim,
7 which indicates on page 2 of 4 that Mr. Cantrell and Mr. Hess previously asserted a claim
8 for diverted principal in the amount of \$1,164.97. Attached as **Exhibit B** is Proof of
9 Claim 10725-02094-1 wherein Ms. Cantrell and Mr. Hess asserts a diverted principal
10 claim. The Trust will not object to Proof of Claim 10725-02094-1 and, therefore, it will
11 be deemed allowed.

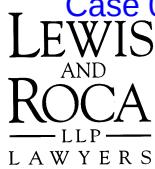
12 **II. JURISDICTION**

13 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
14 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
15 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

16 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and
17 Bankruptcy Rule 3007.

18 **III. APPLICABLE AUTHORITY**

19 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
20 will be allowed unless a party in interest objects. If a party in interest objects to the proof
21 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
22 shall allow the Claim except to the extent that the Claim is "unenforceable against the
23 debtor . . . under any . . . applicable law for a reason other than because such claim is
24 contingent or unmatured." 11 U.S.C. § 502(b). A properly filed proof of claim is
25 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof
26 of claim controverts the presumption, the creditor ultimately bears the burden of



1 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*
 2 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.
 3 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

4 **IV. OBJECTION**

5 The USACM Trust respectfully requests that the Court disallow in full Proof of
 6 Claim No. 10725-02094-2 by Kay M. Cantrell and Donald L. Hess, as joint tenants with
 7 right of survivorship. According to USACM's books and records as reconstructed by
 8 Mesirow, the Roam Development Loan was repaid in full by the borrower, and the Direct
 9 Lenders have in turn received repayment of their investments as provided by the
 10 applicable Loan Servicing Agreement, this Court's orders and the Confirmation Order.
 11 Ms. Cantrell and Mr. Hess's diverted principal claim associated with the Roam
 12 Development Loan will be approved as a general unsecured claim pursuant to Proof of
 13 Claim 10725-02094-1, which is a separate proof of claim to which the USACM Trust does
 14 not object.

15 **V. CONCLUSION**

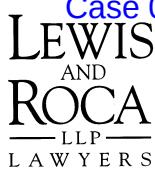
16 For the foregoing reasons, the USACM Trust respectfully requests that the Court
 17 disallow the Subject Proof of Claim in full. The USACM Trust also requests such other
 18 and further relief as is just and proper.

19 DATED this 17th day of September, 2011.

20 LEWIS AND ROCA LLP

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Attorneys for the USACM Liquidating Trust



1 Copy of the foregoing and the Burr Decl. [DE 6722]
2 with the hearing date redacted and Exhibit A
3 omitted mailed by first class postage prepaid on
September 17, 2011 to:

4 Kay M. Cantrell and Donald L. Hess, jtwros
5 Donald L. Hess
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9
10 LEWIS AND ROCA LLP

11 /s/ Renee L. Creswell
12 Renee L. Creswell

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